

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel W.A.
DREW EDMONDSON in his capacity as
ATTORNEY GENERAL OF THE STATE
OF OKLAHOMA, ET AL.

Plaintiff,

vs.

TYSON FOODS, INC., ET AL.

Defendants.

Case No. 05-CV-0329-GKF-SAJ

**STATE OF OKLAHOMA'S RESPONSE TO DEFENDANT'S REQUEST'S FOR
ADMISSION**

Pursuant to Fed. R. Civ. P. 36, plaintiff State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA ("the State"), objects and responds as follows to "Defendants' Requests for Admission to the State of Oklahoma":

GENERAL OBJECTIONS

1. The State objects to the definition of "Plaintiffs," "you" and "your" to the extent it includes "all offices, personnel, entities, and divisions of the Oklahoma state government" and to the extent it includes "W.A. Drew Edmondson and the office of the Oklahoma Attorney General, Miles Tolbert and the office of the Oklahoma Secretary of the Environment and their attorneys, experts, consultants, agents and employees." The plaintiff -- singular -- in this action is the State as sovereign; it is not these additional entities and individuals. Accordingly, wherever in these requests for admission the terms "Plaintiffs" [sic], "you" and "your" are used the State is responding as the sovereign and the sovereign alone.

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2007, the foregoing document was electronically transmitted to the following:

Jo Nan Allen - jonanallen@yahoo.com bacaviola@yahoo.com
Frederick C Baker- fbaker@motleyrice.com; mcarr@motleyrice.com;
fhmorgan@motleyrice.com
Tim Keith Baker - tbakerlaw@sbcglobal.net
Sherry P Bartley - sbartley@mwsgw.com jdavis@mwsgw.com
Michael R. Bond - michael.bond@kutakrock.com amy.smith@kutakrock.com
Douglas L Boyd - dboyd31244@aol.com
Vicki Bronson - vbronson@cwlaw.com lphillips@cwlaw.com
Paula M Buchwald - pbuchwald@ryanwhaley.com
Louis Werner Bullock - lbullock@mkblaw.net, nhodge@mkblaw.net, bdejong@mkblaw.net
A Michelle Campney - campneym@wwhwlaw.com steelmana@wwhwlaw.com
Michael Lee Carr - hm@holdenoklahoma.com MikeCarr@HoldenOklahoma.com
Bobby Jay Coffman - bcoffman@loganlowry.com
Lloyd E Cole, Jr - colelaw@alltel.net; gloriaeubanks@alltel.net; amy_colelaw@alltel.net
Angela Diane Cotner - AngelaCotnerEsq@yahoo.com
Reuben Davis - rdavis@boonesmith.com
John Brian DesBarres - mrjbdb@msn.com JohnD@wcalaw.com

REQUEST FOR ADMISSION NO. 69

Cattle manure contributes phosphorus compounds to the environment of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 69

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection the State denies this request because cattle do not contribute, in the sense of adding or supplying, phosphorus compounds to the “environment of the Illinois River Watershed” as defined herein because phosphorus compounds released from cattle already exist in the “environment” as defined. The State admits that cattle do release phosphorus compounds to a “portion thereof,” the IRW.

REQUEST FOR ADMISSION NO. 70

Cattle manure contributes elemental nitrogen to the environment of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 70

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State denies.

REQUEST FOR ADMISSION NO. 71

Cattle manure contributes nitrogen compounds to the environment of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 78

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount. Subject to and without waiver of this objection the State admits.

REQUEST FOR ADMISSION NO. 79

Cattle manure contributes bacteria to the environment of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 79

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 80

If you answered yes to any one of the requests for admission numbered 68-79, admit that cattle manure contributes a greater amount of the substance addressed in that request or requests to the environment of the Illinois River Watershed than poultry litter.

RESPONSE TO REQUEST NO. 80

Denied.

REQUEST FOR ADMISSION NO. 81

Manure from wildlife contributes elemental phosphorus to the environment of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 81

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State denies.

VI. PLAINTIFFS' STATUS AS CONTRIBUTORS OR ARRANGERS OF ALLEGED HAZARDOUS SUBSTANCES

REQUEST FOR ADMISSION NO. 166

Plaintiffs own or operate sewage lagoons in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 166

The State objects to the term "Plaintiffs", as there is one Plaintiff, the State of Oklahoma.

Subject to and without waiving this objection, the State admits.

REQUEST FOR ADMISSION NO. 167

Plaintiffs own or operate underground storage tanks in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 167

The State objects to the term "Plaintiffs", as there is one Plaintiff, the State of Oklahoma.

The State further objects that this request is irrelevant to the claims and defenses of any party in this case.

REQUEST FOR ADMISSION NO. 168

Poultry litter has been used as fertilizer on lands owned by the State of Oklahoma in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 168

Denied.

REQUEST FOR ADMISSION NO. 169

Plaintiffs have land-applied poultry litter in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 169

The State objects to the term "Plaintiff's" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits, only to that extent

that it has been done for educational and scientific purposes at demonstration sites in the Watershed.

REQUEST FOR ADMISSION NO. 170

Herbicides have been used on lands owned by the State of Oklahoma in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 170

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits that herbicides have been used on some but not all lands owned by the State of Oklahoma.

REQUEST FOR ADMISSION NO. 171

Plaintiffs have applied herbicides in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 171

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits that herbicides have been used on some but not all lands owned by the State of Oklahoma.

REQUEST FOR ADMISSION NO. 172

Pesticides have been used on lands owned by the State of Oklahoma in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 172

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits that pesticides have been used on some but not all lands owned by the State.

REQUEST FOR ADMISSION NO. 173

Plaintiffs have applied pesticides in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 173

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits applying pesticides to some, but not all, of the lands of the IRW.

REQUEST FOR ADMISSION NO. 174

Lands owned by the State of Oklahoma in the Illinois River Watershed have been used to raise cattle.

RESPONSE TO REQUEST NO. 174

The State objects to this request as overly broad, oppressive, and unduly burdensome because it is not reasonably limited or specific as to time. Subject to and without waiver of this objection, the State admits that grazing leases were granted on the Cherokee Wildlife Management Area approximately over twenty-five years ago, but no grazing leases currently exist in the Illinois River Watershed and have not for at least twenty-five years.

REQUEST FOR ADMISSION NO. 175

Plaintiffs have purchased commercial fertilizer.

RESPONSE TO REQUEST NO. 175

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits.

REQUEST FOR ADMISSION NO. 176

Plaintiffs have applied commercial fertilizer to land within the Illinois River Watershed.

RESPONSE TO REQUEST NO. 176

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits to applying commercial fertilizer on some but not all lands in the IRW.

REQUEST FOR ADMISSION NO. 177

The State of Oklahoma has issued permits allowing for the discharge of one or more of the following substances into the waters of the Illinois River Watershed: elemental phosphorus, phosphorus compounds, elemental nitrogen, nitrogen compounds, elemental arsenic, arsenic compounds, elemental zinc, zinc compounds, elemental copper, copper compounds, hormones, and bacteria.

RESPONSE TO REQUEST NO. 177

This request is being responded to in accordance with and subject to objection number 8. The State denies that it has issued permits for the discharge of elemental phosphorus, elemental nitrogen, elemental arsenic, elemental zinc, hormones and elemental copper. The State admits to the extent that it that has issued permits to regulate the discharge to achieve compliance with Oklahoma water quality standards for phosphorus compounds, nitrogen compounds, arsenic compounds, zinc compounds, copper compounds and bacteria.

REQUEST FOR ADMISSION NO. 178

The State of Oklahoma has issued permits or promulgated regulations allowing the land application in the Illinois River Watershed of biosolids containing one or more of the following substances: elemental phosphorus, phosphorus compounds, elemental nitrogen, nitrogen compounds, elemental arsenic, arsenic compounds, elemental zinc, zinc compounds, elemental copper, copper compounds, hormones, and bacteria.

RESPONSE TO REQUEST NO. 178

This request is being responded to in accordance with and subject to objection number 8. The State denies that it has issued permits or promulgated regulations allowing for the land application of biosolids containing elemental phosphorus, elemental nitrogen, elemental arsenic, elemental zinc, and elemental copper in the Illinois River Watershed because these constituents

are not anticipated to be present in biosolids. The State admits that it has in limited circumstances issued permits and promulgated regulations allowing land application of biosolids containing phosphorus compounds, nitrogen compounds, arsenic compounds, zinc compounds, copper compounds, hormones and bacteria in the Illinois River Watershed.

REQUEST FOR ADMISSION NO. 179

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed contains one or more septic systems.

RESPONSE TO REQUEST NO. 179

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits.

REQUEST FOR ADMISSION NO. 180

Ephemeral (seasonal) streams run through one or more parcels of real property owned by Plaintiffs within the Illinois River Watershed.

RESPONSE TO REQUEST NO. 180

The State objects to the term "Plaintiff" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waving this objection, the State admits.

REQUEST FOR ADMISSION NO. 181

Storm water runoff occurs from one or more parcels of real property owned by Plaintiffs within the Illinois River Watershed.

RESPONSE TO REQUEST NO. 181

The State objects to the term "Plaintiff" as there is only one Plaintiff, the State of Oklahoma. The State objects to the use of the phrase "storm water runoff" because it is not defined. Subject to and without waving these objections, the State admits that storm water runoff which is defined as "rain water runoff, snow melt runoff, and surface runoff and drainage"

occurs from one or more parcels of real property owned by the State in the Illinois River Watershed.

REQUEST FOR ADMISSION NO. 182

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of elemental phosphorus present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 182

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waving any objection, the State denies.

REQUEST FOR ADMISSION NO. 183

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of phosphorus compounds present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 183

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waving any objection, the State admits phosphorus compounds are present on real property owned by the State within the Illinois River Watershed.

REQUEST FOR ADMISSION NO. 184

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of elemental nitrogen present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 184

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waving any objection, the State denies.

REQUEST FOR ADMISSION NO. 185

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of nitrogen compounds present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 185

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiving any objection the State admits that nitrogen compounds are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 186

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of elemental arsenic present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 186

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State admits Denies.

REQUEST FOR ADMISSION NO. 187

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of arsenic compounds present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 187

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiving any objection the State admits that arsenic compounds are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 188

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of elemental copper present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 188

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State denies.

REQUEST FOR ADMISSION NO. 189

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of copper compounds present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 189

The State objects to the term "Plaintiff" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiving any objection, the State admits that copper compounds are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 190

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of elemental zinc present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 190

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of this objection, the State denies.

REQUEST FOR ADMISSION NO. 191

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of zinc compounds present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 191

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiving any objection the State admits that zinc compounds are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 192

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of hormones present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 192

The State objects to the term "Plaintiff" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. Subject to and without waiving this objection, the State admits that hormones are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 193

One or more parcels of real property owned by Plaintiffs within the Illinois River Watershed is a source of bacteria present in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 193

The State objects to the term "Plaintiff" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "source" as vague and ambiguous. Subject to and without waiving this objection the State admits that bacteria are present on real property owned by the State.

REQUEST FOR ADMISSION NO. 194

Plaintiffs have authority to conduct inspections, and do conduct inspections of farms that land apply poultry litter as a soil amendment and fertilizer.

RESPONSE TO REQUEST NO. 194

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 195

Construction, dredging or moving rocks or boulders within a streambed of the Illinois River Watershed can add sediment to the stream.

RESPONSE TO REQUEST NO. 195

Admitted.

REQUEST FOR ADMISSION NO. 196

Plaintiffs have engaged in construction or dredging within a streambed of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 196

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 197

Plaintiffs have moved rocks or boulders within a streambed of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 197

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits

REQUEST FOR ADMISSION NO. 198

Plaintiffs have issued one or more permits for construction or dredging within a streambed of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 198

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 199

Plaintiffs have issued permits for moving rocks or boulders within a streambed of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 199

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 200

Plaintiffs have constructed and maintained unpaved roads in the Illinois River Watershed.

RESPONSE TO REQUEST NO. 200

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. Subject to and without waiver of this objection, the State admits.

REQUEST FOR ADMISSION NO. 201

Plaintiffs' construction and maintenance of unpaved roads has caused increased sediment in the streams of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 201

The State objects to the term "Plaintiffs" as there is only one Plaintiff, the State of Oklahoma. The State objects to the term "increased" as it is vague and ambiguous requiring an admission regardless of the how de minimus the increased sediment might be. Subject to and without waiving this objection, the State admits.

REQUEST FOR ADMISSION NO.202

Sediment from dirt or gravel roads contributes elemental phosphorous to the surface waters of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 202

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term "contribute" is not defined with reference to amount or origin. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State denies.

REQUEST FOR ADMISSION NO. 203

Sediment from dirt or gravel roads contributes phosphorous compounds to the surface waters of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 203

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount or origin. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State admits.

REQUEST FOR ADMISSION NO.204

Sediment from dirt or gravel roads contributes elemental nitrogen to the surface waters of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 204

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount or origin. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State denies.

REQUEST FOR ADMISSION NO.205

Sediment from dirt or gravel roads contributes nitrogen compounds to the surface waters of the Illinois River Watershed.

RESPONSE TO REQUEST NO. 205

The State objects to this request on grounds of vagueness and ambiguity inasmuch as the term “contribute” is not defined with reference to amount or origin. This request is being responded to in accordance with and subject to objection number 8. Subject to and without waiver of any objection, the State admits.

REQUEST FOR ADMISSION NO.206

Sediment from dirt or gravel roads contributes elemental arsenic to the surface waters of the Illinois River Watershed.